

**B R E W E R**  
ATTORNEYS & COUNSELORS

March 25, 2019

**VIA ECF**

Hon. Christian F. Hummel  
United States Magistrate Judge  
United States District Court  
Northern District of New York  
James T. Foley U.S. Courthouse  
445 Broadway, Room 441  
Albany, NY 12207

Re: *National Rifle Association of America v. Cuomo, et. al*, No. 18-CV-00566-LEK-CFH

Dear Judge Hummel:

We write to provide the National Rifle Association of America's (the "NRA") status report to the Court for the above styled litigation, pursuant to the Court's Uniform Pretrial Scheduling Order dated December 27, 2018.<sup>1</sup> The parties, the NRA and defendants Governor Andrew Cuomo ("Cuomo"), Maria T. Vullo ("Vullo") and the New York Department of Financial Services ("DFS" and, collectively, "Defendants"), have engaged in discovery and await the Court's rulings on outstanding motions regarding the scope of discovery going forward in the litigation.

**A. Party Discovery**

Both the NRA and Defendants have served requests for production of documents on the other party. The NRA served its First Requests for Production on Cuomo, Vullo, and the DFS, respectively, on November 21, 2018. Defendants served Objections to the NRA's First Requests for Production on December 21, 2018. Following a meet and confer session between the NRA and Defendants on January 4, 2019, Defendants served Supplemental Responses to the NRA's First Requests for Production on January 7, 2019, and produced only 95 documents. To date, Defendants have refused to produce additional documents or produce a privilege log describing the documents withheld on a claim of privilege. The sufficiency of Defendants' production pursuant to the NRA's First Requests for Production is the subject of the NRA's Motion to Compel the Production of Documents,<sup>2</sup> which is pending with the Court.

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<sup>1</sup> ECF No. 66.

<sup>2</sup> ECF No. 73.

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Defendants served their First Request for Production of Documents on February 15, 2019. On March 18, 2019, the NRA served its Responses and Objections to Defendants' First Request for Production of Documents. Pursuant to its responses, the NRA intends to begin production of documents to Defendants on March 25, 2019, and will substantially complete its production by April 19, 2019.

Defendants also served on the NRA their First Set of Interrogatories on February 15, 2019. On March 18, 2019, the NRA served on Defendants its Responses and Objections to Defendants' First Set of Interrogatories.

## **B. Non-Party Discovery**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, the NRA has served subpoenas for non-party discovery on the following entities:

- Everytown For Gun Safety
- Lloyd's America, Inc.
- Talbot Underwriting Ltd.
- Chubb Group Holdings, Inc.
- Illinois Union Insurance Company
- MetLife, Inc.
- Lockton Companies, LLC
- Lockton Affinity Series of Lockton Affinity, LLC
- Kansas City Series of Lockton Companies, LLC.

The NRA communicated with the above-listed entities regarding their respective subpoenas. From these entities, all but Lockton Companies, LLC, Lockton Affinity Series of Lockton Affinity, LLC and Kansas City Series of Lockton Companies, LLC have served objections. The NRA is in the process of conferring with the non-parties regarding the scope of the subpoenas in order to reach an agreement regarding the scope of production. However, the NRA anticipates it will need to file motions to compel certain entities to properly respond to the subpoenas.

The NRA is also in the process of serving subpoenas for discovery on the entities below. However, the DFS, who is the registered agent of process for these organizations under New York state law and various contracts with the below-listed entities, has repeatedly refused to accept service of the subpoenas. The NRA anticipates it will need to seek relief from the Court to require DFS to accept service.

- AmTrust Syndicates Limited

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- Argo Managing Agency Limited
- Atrium Underwriters Limited
- Brit Syndicates Limited
- Canopus Managing Agents Limited
- Chaucer Syndicates Limited
- Liberty Managing Agents Limited
- S.A. Meacock & Company Limited
- Tokio Marine Kiln Syndicates Limited
- Lloyd's Syndicate AUW 0609
- Lloyd's Syndicate BRT 2987
- Lloyd's Syndicate CNP 0958
- Lloyd's Syndicate CNP 4444
- Lloyd's Syndicate CSL 1084
- Lloyd's Syndicate GER 1206
- Lloyd's Syndicate KLN 0510
- Lloyd's Syndicate LIB 4472
- Lloyd's Syndicate ROC 1200
- Lloyd's Syndicate SAM 0727

## **C. Confidentiality and Protective Order**

The parties are in the process of negotiating a stipulated confidentiality and protective order. The NRA reached out to Defendants in November 2018, with a proposed order; however, Defendants indicated that they would prefer to postpone a discussion until the production of confidential information becomes an issue.

Subsequently, the NRA served non-party subpoenas that called for the production of confidential information and Defendants served requests for production and interrogatories on the NRA seeking confidential information. Accordingly, the NRA again sent Defendants a proposed confidentiality order on February 1, 2019. After Defendants failed to respond, the NRA followed up on February 11, 20, 22, and 26, 2019, repeatedly requesting to verbally confer on the issue. Only after the NRA indicated it would seek relief with the Court if Defendants refused to engage in discussions regarding the confidentiality order, did Defendants agree to confer telephonically on February 27, 2019. After the meet and confer, Defendants indicated they would send a redline of the NRA's proposed order shortly. Despite following up with Defendants, they did not send proposed revisions to the NRA's draft confidentiality order until March 13, 2019.

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The parties continue to engage in negotiations concerning the submission of a Stipulated Confidentiality and Protective Order. The NRA hopes that a resolution can be reached shortly without court intervention. Once a resolution is reached, the parties will submit the Stipulated Confidentiality and Protective Order.

**D. Expert Disclosures**

On March 19, 2019, the NRA served the expert reports for James W. Schacht; John R. Cashin; and Peter D. Wrobel. Portions of Mr. Wrobel's report contained confidential information. Pending an order from the Court regarding confidentiality, the NRA withheld schedules containing confidential information and redacted confidential information within the report.

**E. Outstanding Motions**

The NRA and Defendants await rulings from the Court on two motions. First, the NRA filed its Motion to Compel the Production of Documents on January 22, 2019.<sup>3</sup> The motion was fully briefed on February 6, 2019. Second, Defendants filed their Motion for a Protective Order on February 4, 2019.<sup>4</sup> The motion was fully briefed on February 20, 2019. The Court has not requested oral arguments for either motion.

Thank you for your consideration in the above-described matters.

Sincerely,



Stephanie Gase

cc: All Counsel of Record (via ECF)

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<sup>3</sup> ECF No. 73.

<sup>4</sup> ECF No. 78.